SUBCHAPTER 25

WIND ENERGY GENERATION ON PRESERVED FARMS

2:76-25.1 Applicability:

This subchapter applies to the construction, installation, operation and maintenance of wind energy generation facilities on a preserved farm for purposes of generating wind energy to provide power or heat to the farm, reduce the farm's energy costs or alternatively to afford a limited income opportunity to the farm owner provided that the energy facilities occupy no more than one percent of the farm as authorized pursuant to N.J.S.A. 4:1C-32.4.

2:76-25.2 Purpose:

The purpose of this subchapter is to establish the process for the Committee to review an application submitted by any person intending to construct, install and operate wind energy generation facilities on a preserved farm for the purpose of generating wind energy to provide power or heat to the farm, reduce the farm's energy costs or alternatively to afford a limited income opportunity to the farm owner provided that the energy facilities occupy no more than one percent of the farm, as well as to make improvements to any agricultural, horticultural, residential, or other building or structure on the land for that purpose, provided that the wind energy facilities satisfy the provisions of N.J.S.A. 4:1C-32.4 and this subchapter.

2:76-25.3 Definitions:

The following words and terms, as used in this subchapter shall have the following meanings, unless the context clearly indicates otherwise.

"Agreement" means a legally binding written document between the landowner(s) and the board in the case of a farmland preservation program or between the landowner(s), the board, and the municipal governing body, in the case of a municipally approved farmland preservation program, which must be signed by all parties and certified by the State Agriculture Development Committee to signify approval of a petition for creating a farmland preservation program or municipally approved farmland preservation program and recorded with the county clerk's office.

"Application" means a request to construct wind energy generation facilities, structures and equipment on a preserved farm as detailed in a standard form adopted by the Committee.

"Biomass" means an agricultural crop, crop residue or agricultural byproduct that is cultivated, harvested or produced on the farm and which can be used to generate energy in a sustainable manner.

"Board" means a county agriculture development board established pursuant to N.J.S.A. 4:1C-14 or a sub-regional agricultural retention board established pursuant to N.J.S.A. 4:1C-17.

"Committee" means the State Agriculture Development Committee established pursuant to N.J.S.A. 4:1C-4.

"Conservation plan" means a site-specific plan that prescribes land treatment and related conservation and natural resources management measures that are deemed to be necessary, practical and reasonable for the conservation, protection, and development of natural resources, the maintenance and enhancement of agricultural or horticultural productivity, and the control and prevention of non-point source pollution.

"Deed of easement" means the instrument restricting the premises for agricultural purposes that is recorded with the county clerk's office pursuant to the provisions of section 24 of P.L. 1983, c. 32 (N.J.S.A. 4:1C-31), section 5 of P.L. 1988, c. 4 (N.J.S.A. 4:1C-31.1), section 1 of P.L. 1989, c. 28 (N.J.S.A. 4:1C-38), section 1 of P.L. 1999, c. 180 (N.J.S.A. 4:1C-43.1), or sections 37 through 40 of P.L. 1999, c. 152 (N.J.S.A. 13:8C-37 through 13:8C-40). For land acquired in fee simple title for farmland preservation

purposes, the deed transferring the restricted fee ownership of the land by the Committee or other entity is considered the deed of easement.

"Development easement" means an interest in land, less than fee simple absolute title thereto, which enables the owner to develop the land for any nonagricultural purpose as determined by and acquired under the provisions of N.J.S.A. 4:1C-11.1 et seq. or 13:8C-1 et seq. and any relevant rules or regulations promulgated pursuant thereto.

"Electric distribution company (EDC)" means an electric public utility, as the term is defined in N.J.S.A. 48:2-13, that transmits or distributes electricity to end users within New Jersey. An EDC cannot be an electric power supplier, but may provide basic generation service.

"Electric distribution system" means that portion of an electric system, which delivers electricity from transformation points on the transmission system to points of connection at a customer's premises.

"Electric transmission system" means facilities within the PJM Region that have been approved by or meet the definition of transmission facilities established by FERC; or have been demonstrated to the satisfaction of PJM's Office of Interconnection to be integrated with the PJM Region transmission system and integrated into the planning and operation of the PJM Region to serve all of the power and transmission customers within the PJM Region.

"Energy costs" means the farm's expenses to provide power or heat to fixed structures on the farm during the previous calendar year. Fixed structures include buildings and permanent equipment but shall not include vehicles or vehicular equipment.

"Energy demand" means the total amount of power or heat consumed by fixed structures on the farm, expressed in kilowatt hours or kilowatt-hour equivalent, in a given period of time.

"Exception" means a portion of the applicant's landholdings that is excluded from the premises and, although identified in the deed of easement, is unencumbered by the farmland preservation restrictions mandated by N.J.A.C. 2:76-6.15(a) and set forth in the deed of easement.

"Farm" means lands from which a development easement was acquired and a deed of easement recorded with the county clerk's office or lands that are enrolled in an eight-year farmland preservation program or municipally approved farmland preservation program pursuant to N.J.S.A. 4:1C-11 et. seq. and an agreement is recorded with the county clerk's office. Also included is any portion of the farm excluded from the premises that cannot be severed, known as a nonseverable exception, or any portion of the farm excluded from the premises that can be severed but has not been subdivided from the farm, known as a severable exception area.

"Farmland preservation program" means any voluntary program, the duration of which is at least eight years, authorized by law enacted subsequent to the effective date of the Farmland Preservation Bond Act of 1981, P.L. 1981, c.276, which has as its principal purpose the long- term preservation of significant masses of reasonably contiguous agricultural land within agricultural development areas adopted pursuant to N.J.S.A. 4:1C-11 et seq., P.L. 1983, c. 32, and the maintenance and support of increased agricultural production as the first priority use of that land.

"Geotextile fabrics" means permeable, woven and non-woven fabrics that allow for water infiltration into the underlying soil.

"Impervious cover" means any structure or surface that prevents the infiltration of precipitation into the land. This includes but is not limited to facility equipment, utility poles, concrete, asphalt, machine-compacted soil, compacted stone areas, plastic or other impermeable ground cover, and foundations. Impervious cover shall not include conservation practices listed in the U.S. Department of Agriculture Natural Resources Conservation Service (NRCS) New Jersey Field Office Technical Guide (NJ-FOTG), which is incorporated herein by reference, as amended and supplemented, customized for the

State of New Jersey, and prescribes practices and standards for the conservation and management of soil, water and related natural resources, which is available at http://www.nrcs.usda.gov/wps/portal/nrcs/main/national/technical/fotg, when implemented according to the practice standard.

"Large wind energy generation facility" means a wind energy generation facility consisting of one or more turbines with a combined installed nameplate capacity greater than 100 kW and/or a system height of greater than 170 feet.

"Meteorological tower" means a temporary structure designed to support the gathering of wind energy resource data, and includes the tower, base plate, anchors, guy cables and hardware, anemometers, wind direction vanes, booms to hold equipment anemometers and vanes, data logger, instrument wiring and any telemetry devices that are used to monitor or transmit wind speed and wind flow characteristics over a period of time for either instantaneous wind information or to characterize the wind resource at a given location.

"Municipally approved farmland preservation program," hereinafter referred to as "municipally approved program," means any voluntary program, the duration of which is at least eight years, authorized by law enacted subsequent to the effective date of the Farmland Preservation Bond Act of 1981, P.L. 1981, c.276, which has as its principal purpose the long-term preservation of significant masses of reasonably contiguous agricultural land within agricultural development areas adopted pursuant to N.J.S.A. 4:1C-11 et seq., P.L. 1983, c. 32, and the maintenance and support of increased agricultural production as the first priority use of that land. Any municipally approved program shall be established pursuant to N.J.S.A. 4:1C-21.

"Net metering" means a system of metering electricity in which the EDC or electric power supplier:

1. Credits a customer-generator at the full retail rate for each kilowatt-hour produced by a class I renewable energy system installed on the customer-generator's side of the electric revenue meter, up to the total amount of electricity used by that customer during an annualized period; and

2. Compensates the customer-generator at the end of the annualized period for any remaining credits, at a rate equal to the supplier/provider's avoided cost of wholesale power.

"Occupied area" means the total contiguous or noncontiguous area(s) supporting the wind energy facilities and related infrastructure. The total area calculation shall include all areas of land that are devoted to or support the wind energy facilities, including the area of the tower foundation or tower base; the area within the outside perimeter of any guy wires used to support the tower structure or transmission poles as measured at the anchor point; the rotor overhang area; the square footage of wind energy facilities mounted on buildings or other structures; newly constructed nonfarm roadways including access roads; any areas of the farm used for underground piping or wiring to transmit energy where the wiring is less than three feet from the surface; stormwater management structures to support the facilities; areas consisting of other related facilities structures and equipment, including any other buildings or site amenities deemed necessary for the production of wind energy on the farm; and any areas of land no longer available for agricultural or horticultural production due to the presence of the wind energy generation facilities, including areas compacted during construction of the wind energy facilities that are not decompacted following construction. It shall also include the total contiguous or noncontiguous area(s) supporting any other wind, solar or biomass energy facilities and related infrastructure on the farm.

"Operator" means the person or entity that installs, owns or controls the wind energy facilities, structures and equipment.

"Owner" means the owner of record of the farm.

"Person" means natural persons, public or private corporations, companies, associations, societies, firms, partnerships and joint stock companies.

"Power curve" means a manufacturer's graph showing the amount of power in kilowatts a turbine will produce at any given wind speed.

"Premises" means the property subject to the deed of easement, as defined by the legal metes and bounds description contained in the deed of easement.

"Prime farmlands" means lands so defined by the USDA Natural Resources Conservation Service, as found in the National Soil Survey Handbook at NSSH Part 622.04, which is incorporated herein by reference, as amended and supplemented, which is available at http://soils.usda.gov/technical/handbook/contents/part622.html.

"Qualifying tax-exempt nonprofit organization" shall have the same meaning as set forth in section 3 of P.L. 1999, c. 152 (N.J.S.A. 13:8C-3).

"Site plan" means a plot plan that includes the following:

1. Property lines and physical dimensions of the farm, including block(s) and lot(s) designations as set forth in the property survey created at the time of preservation of the farm or an updated version thereof;

2. Location, configuration and size of the occupied area measured in square feet and acres;

3. Facility specifications, including but not limited to manufacturer and model, industry technical bulletin describing the wind energy equipment; rotor diameter, tower type (freestanding or guyed), method of mounting, system height; hub height, average annual wind speed, rated capacity, power curve and expected annual energy generation in alternating current in kilowatt hours; for facilities that will not be net metered, the expected annual energy generation calculation shall require the facilities developer to conduct a site-specific analysis of the turbine location and relevant factors such as hub height, and provide a description of how the expected annual energy generation was determined;

4. Location of above- and below-ground pipes, wires and any other improvements or infrastructure to accommodate the wind energy generation facilities, with depths indicated for below-ground improvements and infrastructure;

5. For facilities that will be net metered, the location of electric meters and sources of energy demand that will be serviced by the facilities;

6. Proposed new roadways and existing roadways used to install, maintain or otherwise access the wind energy generation facilities;

7. Computed distances for setbacks from property lines and roads;

8. Location and computed areas where concrete, asphalt, gravel, geotextile fabrics, or other such land treatments are proposed, and the nature and extent of any site disturbances within the occupied area, and for large wind energy facilities, the location of topsoil stockpile areas;

9. Location, rated capacity, installation date and annual generation/production of any existing wind, solar or biomass energy equipment or structures on the farm in alternating current kilowatt hours if power is generated or kilowatt-hour equivalent if heat is produced;

10. Location of all existing structures and improvements on the farm;

11. For large or small wind energy generation facilities with an occupied area of greater than one acre on the premises, a copy of the conservation plan that was approved by the soil conservation district, which is set forth at N.J.A.C. 2:76-24.6(a)1i(4); and

12. A copy of the farmland assessment form for the most recent tax year approved by the local tax assessor for the farm.

"Small wind energy generation facility" means a wind energy generation facility consisting of one or more turbines with a combined installed nameplate capacity not exceeding 100 kW and a system height of no greater than 170 feet.

"Solar energy" means electricity or heat that is generated through a system that employs solar radiation.

"System height" means the highest point of any component of the wind energy generation facilities, structures and equipment at any point in time, as measured from the ground beneath that point.

"Topsoil" means the upper part of the soil, generally the plow layer within the "A" horizon(s), ordinarily rich in organic matter, which is the most favorable material for plant growth.

"Tower" means a monopole, freestanding or guyed structure that supports a wind generator.

"Wind energy" means electrical or mechanical power that is generated through a system that employs the kinetic energy in the wind.

"Wind energy generation facilities" means distinct wind energy generation systems that require their own dedicated turbine, tower and all other associated components, including but not limited to rotors, blade, base, foundation, nacelle, transformer, vane, inverter, batteries, supports, mounting and stabilization devices, electrical distribution and transmission wires, utility poles and other on-farm equipment, structures and infrastructure necessary to operate and maintain the system for the generation of power or heat.

"Wind turbine" means equipment that converts energy from the wind into electricity. This term includes the rotor, blades and associated mechanical and electrical conversion components necessary to generate, store and/or transfer energy.

2:76-25.4 Eligibility to install, operate and maintain a small or large wind energy generation facility on a farm

(a) Any person who owns a farm may submit an application to the Committee for the construction, installation, operation and maintenance of wind energy generation facilities on the farm provided that:

1. The facilities will not interfere significantly, as set forth in N.J.A.C. 2:76-24.6, with the use of the land for agricultural or horticultural production;

2. The facilities are owned by the landowner, or will be owned by the landowner upon the conclusion of the term of an agreement with the installer or operator of the wind energy generation facilities, structures or equipment by which the landowner uses the income or credits realized from the wind energy generation to purchase the facilities, structures or equipment;

3. The facilities will be used to provide power or heat to the farm, either directly or indirectly, or to reduce, through net metering or similar programs and systems, energy costs on the farm;

4. Wind energy facilities on the farm are limited in annual energy generation to:

i. The farm's previous calendar year's energy demand plus 10 percent, in addition to energy generated from facilities, structures or equipment existing on roofs of buildings or other structures on the farm on January 16, 2010; or

ii. Alternatively at the option of the landowner, to an occupied area consisting of no more than one percent of the area of the farm;

5. If solar or biomass energy systems are located on the farm, the limits in (a)4i and ii above shall apply to the cumulative total energy generated or area occupied by all the wind, solar and biomass energy facilities.

6. The owner(s) of the farm and the wind energy generation facilities will sell energy only through net metering, or as otherwise permitted under an agreement pursuant to (a) 2 above, and/or directly to the electric distribution or transmission system provided that the wind energy facilities occupy no greater than one percent of the farm;

7. The land occupied by the wind energy generation facilities is eligible for valuation, assessment and taxation pursuant to P.L. 1964, c. 48 (N.J.S.A. 54:4-23.1 et seq.) and will continue to be eligible for such valuation after construction of the wind energy generation facilities;

8. The wind energy generation facilities do not exceed one acre of impervious cover on the premises;

9. A wind energy generation facility located in the pinelands area, as defined and regulated by the Pinelands Protection Act, P.L. 1979, c. 111 (N.J.S.A. 13:18A-1 et seq.), complies with the standards of P.L. 1979, c. 111 and the comprehensive management plan for the Pinelands Area adopted pursuant to P.L. 1979, c. 111.

2:76-25.5 Application for the construction, installation, operation and maintenance of a small or large wind energy generation facility

(a) Any person who owns a farm may apply for approval to construct, install, operate and maintain a wind energy generation facility by submitting an application to the Committee. The application shall include the following information and documents:

1. A copy of the recorded deed showing the current record owner of the restricted premises;

2. A site plan;

3. Digital photographs showing the proposed installation site taken from various angles and distances to show the installation site and immediate surroundings;

4. A proposed or fully executed purchase or lease agreement for the wind energy generation facilities, structures and equipment that clearly identifies that the owner of the qualified farm owns or will own the facilities, structures and equipment by the end of the term of a lease agreement and the end date for that agreement.

5. Documentation from the electric distribution company that the wind energy generation facilities are designed in accordance with net metering requirements pursuant to N.J.A.C. 14:8-4; documentation showing that the wind energy generation facilities provide power directly to the farm outside of a meter; or documentation from PJM Interconnection LLC or the EDC showing that the wind energy facilities will provide power directly to the electric distribution or transmission system;

6. A copy of the farm's electric utility bills, and/or copies of other bills, receipts or other documentation demonstrating the amount of electricity or fuel used to meet the farm's energy demand for the previous calendar year; and

7. If the farm is located in the Pinelands Area, evidence that written confirmation has been requested from the Pinelands Commission that the wind energy generation facilities comply with the standards of P.L. 1979, c. 111 and the comprehensive management plan for the Pinelands Area adopted pursuant to P.L. 1979, c. 111.

(b) Any person who owns a farm and intends to expand the physical size or generation capacity of a previously installed wind energy generation facility shall submit a new application to the SADC.

2:76-25.6 Evaluation criteria for a small wind energy generation facility

(a) When reviewing an application, the Committee shall determine whether the application meets the following criteria:

1. Factors for determining if small wind energy generation facilities, structures and equipment interfere significantly with the use of the land for agricultural or horticultural production are as follows:

i. The facilities do not conflict with the deed of easement, including but not limited to, the following:

(1) There is no detrimental impact to drainage, flood control, water conservation, erosion control or soil conservation on the premises;

(2) During construction, installation, operation and maintenance of the wind energy generation facilities, appropriate measures are taken to address soil and water conservation resource concerns on the premises;

(3) Small wind energy facilities on a farm with an occupied area of more than one acre on the premises shall be constructed, installed, operated and maintained in accordance with an approved conservation plan that addresses soil and water resource concerns outlined in the National and State Resources Concerns and Quality Criteria (Section III) and Practice Standards (Section IV) of the U.S. Department of Agriculture Natural Resources Conservation Service (NRCS) New Jersey Field Office Technical Guide (NJ-FOTG), which is incorporated herein by reference, as amended and supplemented, customized for the State of New Jersey, prescribing practices and standards for the conservation and management of soil, water, and related natural resources, which is available at http://www.nrcs.usda.gov/wps/portal/nrcs/main/national/technical/fotg. The conservation plan filed must include a completed and NRCS-approved CPA-52 Environmental Evaluation Worksheet;

(4) The types of agricultural use or production that can occur on the premises shall not be restricted;

(A) The presence of the wind energy generation facilities shall not negatively impact the ability to utilize any portion of the premises outside the occupied area for a variety of agricultural or horticultural purposes or uses;

(5) Small wind energy generation facilities shall not interfere with the ability to access the premises for agricultural or horticultural purposes or uses, and to ensure compliance with the deed of easement and the provisions of this chapter;

(6) Small wind energy generation facilities shall not supply power or heat to an off-farm source of energy demand;

(A) Wind energy generation facilities shall not be interconnected to any off-farm energy consumer or off-farm source of energy demand;

(B) Wind energy generation facilities shall not be interconnected in a series to other energy generation facilities located off the farm;

(C) Wind energy generation facilities may be directly connected to the electric distribution or transmission system for the primary purpose of producing wholesale power, provided the facilities do not occupy more than one percent of the farm and are otherwise consistent with N.J.S.A. 4:1C-32.4 and the provisions of this subchapter;

(7) Easements shall not be provided through the premises for the purpose of transmitting power generated by an off-farm source, or to provide for roadways to service wind energy generation facilities not located on the farm;

(A) Easements may be permitted through the premises for the purpose of providing access to operate and maintain the wind energy generation facilities pursuant to an agreement in (a)2i.

(8) Small wind energy generation facilities servicing a use in a severable exception area shall be located entirely within the exception area;

(9) Small wind energy generation facilities primarily servicing nonagricultural and/or nonresidential uses in a nonseverable exception area shall be located entirely in the nonseverable exception area to the maximum extent practicable and financially feasible;

(A) Where it is not possible to locate such facilities entirely in the nonseverable exception area, the portion of the occupied area outside the nonseverable exception area shall not exceed one acre or one percent of the farm, whichever is less; and the SADC may require from the facilities installer an itemization of all energy consuming devices connected to the electric revenue meter(s) to be serviced by the facilities, by energy demand and type of use, to determine whether the facilities will primarily service nonagricultural and/or nonresidential uses in the nonseverable exception area.

(B) Small wind energy generation facilities located outside nonseverable exception areas to service energy demand within the nonseverable exception areas, may not be

permitted or may be subject to more stringent Federal limitations than described in this sub-subparagraph, if the farm was preserved with funding from the U.S. Department of Agriculture Natural Resources Conservation Service's Farm and Ranch Lands Protection Program.

(10) Small wind energy generation facilities shall be located and configured in a manner that maximizes the use of the premises for agricultural or horticultural purposes;

(A) Facilities shall not be constructed or installed on prime farmland to the maximum extent practicable and financially feasible;

(B) Facilities shall be located along field edges and in nonproduction areas to the maximum extent practicable and financially feasible; and

(C) Facilities shall be sited and configured to avoid dividing larger fields into smaller fields and isolating areas of the premises such that they are no longer viable or efficient for agricultural production, including but not limited to, creating negative impacts on support infrastructure such as irrigation systems;

ii. The treatment of the premises for purposes of constructing, installing, operating or maintaining small wind energy generation facilities within the occupied area shall be in accordance with the following standards to ensure the land can readily be returned to active agricultural or horticultural production after removal of the wind energy generation facilities;

(1) Site disturbance associated with small wind energy generation facilities, including, but not limited to, land clearing, grading, topsoil and subsoil removal, excavation and soil compaction, shall not exceed one acre on the premises;

(A) If any wind, solar or biomass energy generation facilities are located on the premises, the one-acre limit in (a)1ii(1) above shall apply to the cumulative total site disturbance resulting from all of the wind, solar or biomass energy systems on the premises;

(B) Land smoothing in accordance with Practice Standards (Code 466) of the Natural Resources Conservation Service NJ-Field Office Technical Guide (NRCS NJFOTG) shall not be considered site disturbance.

(2) Excess topsoil shall not be removed from the premises but shall be distributed or stockpiled elsewhere on the premises;

(A) For facilities with an occupied area of greater than one acre on the premises, topsoil shall be distributed or stockpiled on the premises in accordance with the approved conservation plan;

(3) The use of geotextile fabrics on the premises is permitted only for the purpose of conducting agricultural or horticultural production within the occupied area, unless otherwise permitted in this section;

(4) The use of concrete or asphalt on the premises is prohibited within the occupied area except for mounting of the wind turbines, inverters, transformers, power conditioning units, control boxes and other such system components;

(5) The placement of gravel or stone on the premises is prohibited unless recommended as part of the approved conservation plan;

(6) Use of existing roadways to provide access to the wind energy generation facilities shall be maximized to avoid the construction of new onsite roadways to the maximum extent practicable;

(7) New roadways on the premises shall be designed as grassed roadways to minimize the extent of soil disturbance, water runoff and soil compaction on the premises;

(8) The use of geotextile fabrics and gravel for the construction of temporary roadways during the construction of the wind energy generation facilities is permitted provided that the geotextile fabrics and gravel are removed once the wind energy generation facilities are in operation;

(9) Where it is not practicable to utilize the occupied area on the premises for agricultural or horticultural production in accordance with N.J.A.A. 54:4-23.1 et seq.:

(A) The occupied area shall be maintained in vegetative cover to prevent soil erosion, mowed on a regular basis and managed to prevent weeds or other invasive species from growing up or spreading to other areas of the premises; or

(B) The occupied area beneath facilities mounted on buildings or other structures permitted pursuant to the deed of easement, shall be maintained in a manner consistent with the use of the buildings or structures;

iii. Small wind energy generation facilities shall be deemed abandoned and the facilities shall be decommissioned in those instances when they are longer being utilized to produce wind energy for a period of 18 consecutive months.

(1) The decommissioning of the facilities, structures and equipment shall ensure that the agricultural productivity of the soil is restored to the greatest extent practicable, including but not limited to the following:

(A) All small wind energy generation facilities shall be removed from the premises, including underground foundations and cables to a depth of 36 inches, and the land shall be restored in order to achieve as much agricultural productivity of the soil as practicable and financially feasible;

(B) The decommissioning of small wind energy generation facilities with an occupied area of greater than one acre on the premises shall be performed in accordance with an approved conservation plan prepared pursuant to NJ-FOTG that addresses soil and water resource concerns, as set forth at (a)1i(3).

2. Factors for determining if the small wind energy generation facilities, structures and equipment are owned by the landowner or will be owned by the landowner upon the conclusion of the

term of an agreement with the installer or operator of the wind generation facilities, structures or equipment by which the landowner uses the income or credits realized from the wind energy generation to purchase the facilities, structures or equipment, are as follows:

i. A copy of a fully executed agreement, such as a purchase or lease agreement for the facilities, structures and equipment, shall be provided to the Committee that clearly identifies that the owner(s) of the farm will be the sole owner(s) of the facilities, structures and equipment on installation, or will be the sole owner(s) by the end of the term of the agreement.

(1) The term of an agreement whereby a farm owner will purchase the facilities at the end of the agreement shall not exceed 20 years;

(2) The agreement shall include an unconditional assignment to any subsequent owner taking title to the farm prior to the conclusion of an agreement;

ii. No portion of the land on the premises may be leased for the purpose of wind energy generation;

(1) A farm owner shall not lease, rent or otherwise obligate wind energy generation facilities to another individual or party other than the original party or their sucessors in title pursuant to a purchase agreement in (a)2i above;

3. Factors for determining if the power or heat to the farm is provided directly or indirectly, or reduces through net metering or similar programs and systems, energy costs on the farm, are as follows:

i. For small wind energy generation facilities that will be net metered, an approved Part One Interconnection/Application Agreement Form approved by the EDC pursuant to N.J.A.C. 14:8-5.4, 5.5 and 5.6, which is available from the EDC, and includes a Part 1 (Terms and Conditions) and a Part 2 (Certificate of Completion), shall be provided to the Committee, and the project shall meet the definition of net metering; or

ii. For small wind energy generation facilities that will not be net metered, the landowner shall provide to the Committee:

(1) Documentation that the energy will be used to provide power or heat directly to the farm outside of the meter; or

(2) Where the facilities will provide energy directly to the electric distribution or transmission system, copies of electric utility bills and/or other bills, receipts, or documentation demonstrating the cost to provide power or heat to meet the farm's energy demand, and a copy of either:

(A) An approved PJM Interconnection Service Agreement, which is part of the PJM Open Access Transmission Tariff, available at www.pjm.com, completed and signed by the EDC; or

(B) An approved Part One Interconnection/Application Agreement Form approved by the EDC pursuant to N.J.A.C. 14:8-5.4, 5.5 and 5.6, completed and signed by the EDC ;

4. Factors for determining that the annual energy generation of small wind energy generation facilities on the farm is limited to the farm's previous calendar year's energy demand plus 10 percent, in addition to energy generated or collected from facilities, structures or equipment existing on roofs of buildings or other structures on the farm on January 16, 2010, are as follows:

i. The annual energy generation is based on the monthly sum of the farm's previous calendar year's energy demand and does not exceed that amount plus 10 percent.

ii. The landowner shall provide copies of the farm's electric utility bills and/or other bills, receipts or other documentation demonstrating the farm's energy costs

iii. The farm owner shall provide documentation of installation date(s) for energy generation facilities, structures or equipment already existing on roofs of buildings or other structures on the farm.

iv. If solar or biomass energy generation facilities are located on the farm, the limit in (a)4i. above applies to the cumulative energy generated by wind, solar and biomass facilities on the farm.

5. Factors for determining that the small wind energy generation facilities on the farm are limited to an occupied area consisting of no more than one percent of the area of the farm are as follows:

i. A copy of the site plan depicting the occupied area shall be provided to the Committee.

ii. Small wind energy generation facilities installed on the farm prior to the enactment of P.L. 2009, c. 213 on January 16, 2010, shall not be considered part of the occupied area in applications for new wind energy generation facilities unless the applications involve an expansion in the physical size or generation capacity of pre-existing facilities; and

iii. If wind, solar or biomass energy generation facilities are located on the farm, the limit in (this paragraph shall apply to the total cumulative area occupied by all the wind, solar and biomass energy generation facilities on the farm.

6. Factors for determining that the person who owns the farm and the small wind energy generation facilities may only sell energy through net metering or as otherwise permitted under an agreement allowed pursuant to subsection (a)2 above, and/or directly to the electric distribution or transmission system provided that the occupied area of the wind energy generation facilities does not exceed one acre.

i. For facilities that will be net metered, an approved Part One Interconnection/Application Agreement Form approved by the EDC pursuant to N.J.A.C. 14:8-5.4, 5.5 and 5.6, which is available from the EDC, and includes a Part 1 (Terms and Conditions) and a Part 2

(Certificate of Completion), shall be provided to the Committee, and the project shall meet the definition of net metering;

ii. For facilities that will be connected directly to the electric distribution or transmission system, the following shall be provided:

(1) An approved PJM Interconnection Service Agreement, which is part of the PJM Open Access Transmission Tariff, available at http://www.pjm.com/documents/~/media/documents/agreements/tariff.ashx, completed and signed by the EDC; or

(2) An approved Part One Interconnection/Application Agreement Form approved by the EDC pursuant to N.J.A.C. 14:8-5.4, 5.5 and 5.6, completed and signed by the EDC;

iii. A copy of a fully executed agreement, such as a purchase or lease agreement for the wind energy generation facilities, that clearly identifies that the owner(s)) of the farm owns or will purchase and own the wind energy generation facilities, structures and equipment at the end of the term of the agreement, including the date the owner(s) of the farm shall assume ownership of the facilities;

iv. For small wind energy generation facilities that will connect directly to the electric distribution or transmission system, the Committee shall determine from a review of the site plan that the occupied area of the proposed facilities does not exceed one percent of the farm;

(1) If solar or biomass energy facilities are located on the farm, the limit in (a)6iv above shall apply to the total cumulative area occupied by all of the solar, wind and biomass energy facilities on the farm.

7. Factors for determining that the land occupied by the small wind energy generation facilities is eligible for valuation, assessment and taxation pursuant to P.L. 1964, c. 48 (N.J.S.A. 54:4-23.1 et seq.) and continues to be eligible for such valuation pursuant to N.J.S.A. 54:4-23 are as follows:

i. A copy of the farmland assessment form approved by the local tax assessor shall be provided for the most recent tax year.

ii. The SADC shall confirm, in consultation with the New Jersey Department of the Treasury, Division of Taxation, that the small wind energy generation facilities as proposed will not disqualify any portion of the premises from farmland assessment eligibility.

8. Impervious cover associated with the small wind energy generation facilities shall not exceed one acre on the premises;

i. If solar or biomass energy facilities are located on the premises, the one-acre limit in (a)8 above shall apply to the cumulative total of impervious cover resulting from all of the wind, solar and biomass energy facilities on the premises.

9. Factors for determining that a small wind energy generation facility located in the Pinelands Area, as defined and regulated by the Pinelands Protection Act, P.L. 1979, c. 111 (N.J.S.A. 13:18A-1 et seq.), complies with the standards of P.L. 1979, c. 111 and the comprehensive management plan for the Pinelands Area adopted pursuant to P.L. 1979, c. 111 are as follows:

i. A copy of written correspondence from the Pinelands Commission shall be provided confirming that the small wind energy generation facilities comply with the standards of P.L. 1979, c. 111 and the comprehensive management plan for the Pinelands Area adopted pursuant to P.L. 1979, c. 111;

10. The construction of small wind energy generation facilities on farms preserved with any funding provided by the U.S. Department of Agriculture Natural Resources Conservation Service (NRCS) through the Farm and Ranch Lands protection Program (FRPP) or any successor NRCS grant program protecting land for agricultural uses, shall require the advanced written approval of the U.S. Department of Agriculture Natural Resources Conservation Service;

11. Compliance with the criteria in this section shall be in addition to any other applicable State or Federal laws or regulations, including but not limited to:

1. N.J.S.A. 13:19-1 et seq., Coastal Area Facilities Review Act
2. N.J.A.C. 7:38, Highlands Water Protection and Planning Act Rules; and
3. N.J.A.C. 7:8, Stormwater Management.

2:76-25.7 Evaluation criteria for a large wind energy generation facility

(a) When reviewing an application, the Committee shall determine whether the application meets the following criteria:

1. Factors for determining if large wind energy generation facilities, structures and equipment interfere significantly with the use of the land for agricultural or horticultural production are as follows:

i. The facilities do not conflict with the deed of easement, including but not limited to, the following:

(1) There is no detrimental impact to drainage, flood control, water conservation, erosion control or soil conservation on the premises;

(2) Construction, installation, operation and maintenance of large wind energy generation facilities shall be conducted in accordance with an approved conservation plan that addresses soil and water resource concerns outlined in the National and State Resources Concerns and Quality Criteria (Section III) and Practice Standards (Section IV) of the U.S. Department of Agriculture Natural Resources Conservation Service (NRCS) New Jersey Field Office Technical Guide (NJ-FOTG), which is incorporated herein by reference, as amended and supplemented, customized for the State of New Jersey, prescribing practices and standards for the conservation and management of soil, water and related natural resources, which is available at http://www.nrcs.usda.gov/wps/portal/nrcs/main/national/technical/fotg. The conservation plan filed must include a completed and NRCS-approved CPA-52 Environmental Evaluation Worksheet,

incorporated by reference, as amended and supplemented, which is available at http://www.nj.nrcs.usda.gov/technical/environmental_compliance/index.html;

(3) During construction and installation of large wind energy generation facilities, appropriate measures are taken within the occupied area to control soil erosion from wind and water on the premises, including, but not limited, to the following:

(A) During construction, all topsoil shall be stripped from work areas, including but not limited to tower sites; staging areas used for tower laydown and other industrial/ heavy equipment; areas used for construction vehicle and equipment traffic and parking, including access road pulloff areas; and areas used for electric cable trenches and access roads; no topsoil stripping is required for installation of buried electric lines if direct burial methods such as cable plow and rock saw are used, and the width of disturbance is 30 feet or less;

(B) Stripped topsoil shall be segregated from subsoil and stockpiled in accordance with the approved conservation plan;

(C) Rocks shall be separated from topsoil, and all topsoil shall be stockpiled separately from other excavated material in accordance with the approved conservation plan;

(D) Culverts and diversions shall be installed to maintain natural drainage patterns in accordance with the approved conservation plan;

(E) The large wind energy generation facilities shall not interfere with existing soil and water conservation practices such that the facilities impair functionality of the practices for their intended purposes;

(4) During operation and maintenance of the large wind energy generation facilities, appropriate measures are taken to address soil and water conservation resource concerns on the premises;

(5) The types of agricultural use or production that can occur on the premises shall not be restricted;

(A) The presence of large wind energy generation facilities shall not negatively impact the ability to utilize any portion of the premises outside the occupied area for a variety of agricultural or horticultural purposes;

(6) The facilities shall not interfere with the ability to access the premises for agricultural or horticultural purposes, and to ensure compliance with the deed of easement and the provisions of this chapter;

(7) Facilities shall not supply power or heat to an off-farm source of energy demand;

(A) Large wind energy generation facilities shall not be interconnected to any off-farm energy consumer or off-farm source of energy demand;

(B) Facilities shall not be interconnected in a series to other energy generation facilities located off the farm;

(C) Facilities may be directly connected to the electric distribution or transmission system for the primary purpose of producing wholesale power provided the facilities do not occupy more than one percent of the farm and are otherwise consistent with N.J.S.A. 4:1C-32.4 and the provisions of this chapter.

(8) Easements shall not be provided through the premises for the purpose of transmitting power generated by an off-farm source, or to provide for roadways to service wind energy generation facilities not located on the farm;

(A) Easements may be permitted through the premises for the purpose of providing access to maintain and operate the wind energy generation facilities pursuant to an

agreement in (a)2i.

(9) Large wind energy generation facilities servicing a use in a severable exception area shall be located entirely within the severable exception area;

(10) Facilities primarily servicing nonagricultural and/or nonresidential uses in a nonseverable exception area shall be located entirely in the nonseverable exception area to the maximum extent practicable or financially feasible.

(A) Where it is not possible to locate such facilities entirely in the nonseverable exception area, the portion of the occupied area outside the nonseverable exception area shall not exceed one acre or one percent of the farm, whichever is less; and the SADC may require from the facilities installer an itemization of all energy consuming devices connected to the electric revenue meter(s) to be serviced by the facilities, by energy demand and type of use, to determine whether the facilities will primarily service nonagricultural and/or nonresidential uses in the nonseverable exception area;

(B) Large wind energy generation facilities located outside nonseverable exception areas to service energy demand within the nonseverable exception areas, may not be permitted or may be subject to more stringent Federal limitations than described in this sub-subparagraph, if the farm was preserved with funding from the U.S. Department of Agriculture Natural Resources Conservation Service's Farm and Ranch Lands Protection Program.

(11) Large wind energy generation facilities shall be located and configured in a manner that maximizes the use of the premises for agricultural or horticultural purposes.

(A) Facilities shall not be constructed or installed on prime farmland to the maximum extent practicable and financially feasible;

(B) Facilities and new access roads shall be located along field edges and in nonproduction areas, and configured to avoid dividing larger fields into smaller fields, to the maximum extent physically and financially feasible;

(C) The siting of large wind energy generation facilities shall avoid negatively impacting existing irrigation, drainage and erosion control structures, including but not limited to, diversions, ditches and tile lines; any existing irrigation, drainage and erosion control structures negatively impacted during construction shall be repaired to fully restore their function unless the structures are to be eliminated based on a new design, and such restoration or implementation of new design shall be completed prior to the facilities becoming operational.

(D) Electric interconnect cables and transmission lines shall be installed below ground to the maximum extent practicable; cables shall be buried to a minimum depth of 36 inches in agricultural or horticultural production areas; in areas where depth of soil over bedrock ranges from 0 to 36 inches, electric cables shall be buried entirely below the top of the bedrock or in accordance with UCC standards. At no time shall the depth of cover be less than 24 inches below the surface except at the connection point.

(E) Where above-ground interconnect cables and/or transmission lines are necessary, they shall be located outside agricultural field boundaries to the maximum extent practicable; where supporting structures must be located in agricultural fields, the structures shall be designed and configured to minimize impacts to the agricultural land;

ii. The treatment of the premises for purposes of constructing, installing, operating or maintaining large wind energy generation facilities within the occupied area shall be in accordance with the following standards to ensure the land can readily be returned to active agricultural or horticultural production after removal of the large wind energy facilities:

(1) Site disturbance associated with the large wind energy facilities, including but not limited to land clearing, grading, topsoil and subsoil removal, excavation and soil compaction, the placement of fill material, and the construction of new access roads, shall not exceed two acres on the premises.

(A) If wind, solar or biomass energy facilities are located on the premises, the two-acre limit in (a)1ii(1) above shall apply to the cumulative total site disturbance resulting from all of the wind, solar or biomass energy systems on the premises;

(B) Land smoothing in accordance with Practice Standards (Code 466) of the Natural Resources Conservation Service NJ-Field Office Technical Guide (NRCS NJFOTG) shall not be considered site disturbance;

(2) Excess topsoil shall not be removed from the premises but shall be distributed or stockpiled elsewhere on the premises in accordance with the approved conservation plan;

(3) The use of geotextile fabrics on the premises is permitted only for the purpose of conducting agricultural or horticultural production within the occupied area, unless otherwise permitted in this section;

(4) The use of concrete or asphalt on the premises is prohibited within the occupied area, except as follows:

(A) The mounting of the wind turbine, inverters, transformers, power conditioning units, control boxes and other such system components;

(5) The placement of gravel or stone on the premises is prohibited except for the following:

(A) To cover geotextile fabric for access roads necessary to construct and maintain the facilities; and

(B) For the construction of a crane pad;

(C) If recommended as part of an approved NRCS soil and water conservation practice;

(6) The importation of fill material onto the premises is limited to the occupied area;

(7) Access roads on the premises shall be constructed using geotextile fabric covered with gravel;

(A) All roads shall be the minimum width necessary to accommodate construction traffic;

(B) The width of permanent access roads in agricultural fields shall be no greater than 16 feet.

(C) New roadways that cross agricultural fields shall be located along ridge tops, and following hedgerows and field boundaries to the maximum extent practicable.

(D)Access roads shall be constructed so they are level with the adjacent fields to facilitate crossing by farm equipment to the maximum extent practicable;

(E) Roads across agricultural fields shall not be constructed during wet conditions to protect agricultural soils from damage;

(11) During construction of the facilities, all construction-related vehicle and equipment traffic and parking shall be restricted to the access road and/or designated work areas unless prior approval has been obtained from the Committee;

(12) Crane set-up and break-down activities are restricted to designated work areas on the premises;

(13) All pieces of wire, bolts and other unused metal objects shall be disposed of as soon as possible after unloading of turbine components to ensure these objects will not be mixed with any topsoil;

(14) Concrete trucks shall be washed outside of active agricultural areas, and such areas shall be considered part of the site disturbance calculation;

iii. Following construction of the wind energy generation facilities, the premises shall be restored for agricultural and horticultural purposes in accordance with the approved conservation plan ;

(1) All excess subsoil and all gravel, concrete and other construction debris and materials shall be removed from the premises, including but not limited to along access roads, the crane paths, around towers and in temporary parking and staging areas;

(2) Any excess topsoil that was excavated from the premises for purposes of constructing the large wind generation facilities shall be retained on the premises for future use in accordance with the approved conservation plan;

(3) Topsoil stripped from work areas shall be replaced;

(4) All rocks 4 inches or larger that were displaced during construction of the wind energy generation facilities shall be removed from the surface prior to placement of topsoil;

(5) Excess concrete shall not be buried or left on the premises;

(6) Soils on the premises that were compacted during construction of the wind energy generation facilities shall be decompacted to a depth of at least 12 inches in accordance with the approved conservation plan in order to ensure the land can be used for a variety of agricultural and horticultural purposes, or the compacted areas shall be considered part of the occupied area.

(6) Decompaction, topsoil replacement and other soil restoration practices shall not be conducted at any time when soils are in a wet or plastic state, including from October through May unless soils are dry and workable;

(7) All restored agricultural areas shall be seeded with a seed mix consistent with agronomic practice and the surrounding area after any required decompaction of soils;

(8) Access roads shall be regraded to allow for farm equipment crossing and to restore original surface drainage patterns or provide for new drainage patterns in accordance with the approved conservation plan;

(9) The restored site shall be reviewed each of the following two growing seasons to identify drainage, compaction or other issues that may not have been apparent immediately following restoration, and appropriate steps shall be taken to correct those issues consistent with the recommendations of the approved conservation plan. Such issues include but are not limited to, insufficient topsoil thickness; excessive amounts of rock and large stones; trench settling; decreased crop productivity; and drainage problems.

iv. Large wind energy generation facilities shall be deemed abandoned and the facilities shall be decommissioned in those instances when they are longer being utilized to produce wind energy for a period of 18 consecutive months.

(1) The decommissioning of the facilities, structures and equipment on the premises shall ensure that the agricultural productivity of the soil is restored to the greatest extent practicable, including but not limited to, the following:

(A) Decommissioning shall be done in accordance with an approved conservation plan, prepared pursuant to the NJFOTG, that addresses soil and water resource concerns, as set forth at N.J.A.C. 2:76-25.6(a)1i(3).

(B) All facilities, structures and equipment shall be removed from the premises, including underground foundations and cables to a depth of 36 inches;

(C) Excavated areas shall be backfilled with clean sub-grade material covered by a layer of topsoil, with the depth of restored topsoil consistent with the depth of topsoil of the surrounding land;

2. Factors for determining if large wind energy generation facilities, structures and equipment are owned by the landowner or will be owned by the landowner upon the conclusion of the term of an agreement with the installer or operator of the large wind energy generation facilities, structures or equipment by which the landowner uses the income or credits realized from the wind energy generation to purchase the facilities, structures or equipment, are as follows:

i. A copy of a fully executed agreement such as a purchase or lease agreement for the facilities, structures and equipment, shall be provided to the Committee that clearly identifies that the owner(s) of the farm will be the sole owner(s) of the facilities, structures and equipment upon installation, or will be the sole owner(s) by the end of the term of the agreement.

(1) The term of an agreement whereby a farm owner will purchase the facilities at the end of the agreement shall not exceed 20 years;

(2) The agreement shall include an unconditional assignment to any subsequent owner taking title to the farm prior to the conclusion of an agreement;

ii. No portion of the land on the premises may be leased for the purpose of wind energy generation;

(1) Large wind energy generation facilities may be leased only pursuant to an agreement in (a)2i above;

(2) A farm owner shall not lease, rent or otherwise obligate wind energy facilities to another individual or party other than the original party or their successors in title pursuant to a purchase agreement in (a)2i above;

3. Factors for determining if the power or heat to the farm is provided directly or indirectly, or reduces through net metering or similar programs and systems, energy costs on the farm, are as follows:

i. For large wind energy generation facilities that will be net metered, an approved Part One Interconnection/Application Agreement Form approved by the EDC pursuant to N.J.A.C. 14:8-5.4,

5.5 and 5.6, which is available from the EDC, and includes a Part 1 (Terms and Conditions) and a Part 2 (Certificate of Completion), shall be provided to the Committee, and the project shall meet the definition of net metering; or

ii. For large wind energy generation facilities that will not be net metered, the landowner shall provide to the Committee:

(1) Documentation that the energy will be used to provide power or heat directly to the farm outside of the meter; or

(2) Where the facilities will provide energy directly to the electric distribution or transmission system, copies of electric utility bills and/or other bills, receipts or documentation demonstrating the cost to provide power or heat to meet the farm's energy demand, and a copy of either:

(A) An approved PJM Interconnection Service Agreement, which is part of the PJM Open Access Transmission Tariff, available at www.pjm.com, completed and signed by the EDC; or

(B) An approved Part One Interconnection/Application Agreement Form approved by the EDC pursuant to N.J.A.C. 14:8-5.4, 5.5 and 5.6, completed and signed by the EDC ;

4. Factors for determining that the annual energy generation of large wind energy generation facilities on the farm is limited to the farm's previous calendar year's energy demand plus 10 percent, in addition to energy generated or collected from facilities, structures or equipment existing on roofs of buildings or other structures on the farm on January 16, 2010, are as follows:

i. The annual energy generation is based on the monthly sum of the farm's previous calendar year's energy demand and does not exceed that amount plus 10 percent;

ii. The landowner shall provide copies of the farm's electric utility bills and/or other bills, receipts or other documentation demonstrating the amount of electricity or fuel used to meet the farm's energy demand; and

iii. The farm owner shall provide documentation of installation date(s) for energy generation facilities, structures or equipment already existing on roofs of buildings or other structures on the farm;

iv. If solar or biomass energy generation facilities are located on the farm, the limit in (a)4i above applies to the cumulative energy generated by wind, solar and biomass facilities on the farm;

5. Factors for determining that large wind energy generation facilities are limited to an occupied area consisting of no more than one percent of the area of the farm are as follows:

i. A copy of the site plan depicting the occupied area shall be provided to the Committee.

ii. Large wind energy generation facilities installed on the farm prior to the enactment of P.L. 2009, c. 213 on January 16, 2010, shall not be considered part of the occupied area in applications for new wind energy facilities unless the applications involve an expansion in the physical size or generation capacity of pre-existing facilities;

iii. If wind, solar or biomass energy generation facilities are located on the farm, the limit in this paragraph shall apply to the total cumulative area occupied by all the wind, solar and biomass energy generation facilities on the farm.

6. Factors for determining that the person who owns the farm and the large wind energy generation facilities may only sell energy through net metering or as otherwise permitted under an agreement allowed pursuant to (a)2 above, and/or directly to the electric distribution or transmission

system provided that the occupied area of the large wind energy generation facilities does not exceed one acre.

i. For large wind energy generation facilities that will be net metered, an approved Part One Interconnection/Application Agreement Form approved by the EDC pursuant to N.J.A.C. 14:8-5.5 and 5.6, which is available from the EDC, and includes a Part 1 (Terms and Conditions) and a Part 2 (Certificate of Completion), shall be provided to the Committee, and the project shall meet the definition of net metering;

ii. For large wind energy generation facilities that will be connected directly to the electric distribution or transmission system, the following shall be provided:

(1) An approved PJM Interconnection Service Agreement, which is part of the PJM Open Access Transmission Tariff, available at www.pjm.com, completed and signed by the EDC; or

(2) An approved Part One Interconnection/Application Agreement Form approved by the EDC pursuant to N.J.A.C. 14:8-5.4, 5.5 and 5.6, completed and signed by the EDC;

iii. A copy of a fully executed agreement, such as a purchase or lease agreement for the large wind energy generation facilities, that clearly identifies that the owner of the farm owns or will purchase and own the wind energy facilities, structures and equipment at the end of the term of the agreement, including the date the owner(s) of the farm shall assume ownership of the facilities, shall be provided to the Committee;

iv. For large wind energy generation facilities that will connect directly to the electric distribution or transmission system, the Committee shall determine from a review of the site plan that the occupied area of the proposed facilities does not exceed one percent of the farm;

(1) If solar or biomass energy generation facilities are located on the farm, the limit in (a)6iv above shall apply to the total cumulative area occupied by all of the wind, solar and biomass energy facilities on the farm;

7. Factors for determining that the land occupied by the large wind energy generation facilities is eligible for valuation, assessment and taxation pursuant to P.L. 1964, c. 48 (N.J.S.A. 54:4-23.1 et seq.) and continues to be eligible for such valuation pursuant to N.J.S.A.54:4-23, are as follows:

i. A copy of the farmland assessment form approved by the local tax assessor shall be provided for the most recent tax year;

ii. The SADC shall confirm, in consultation with the New Jersey Department of the Treasury, Division of Taxation, that the large wind energy generation facilities as proposed will not disqualify any portion of the premises from farmland assessment eligibility;

8. The impervious cover associated with large wind energy generation facilities shall not exceed one acre on the premises.

i. If wind, solar or biomass energy generation facilities are located on the premises, the one-acre limit in (a)8 above shall apply to the cumulative total of impervious cover resulting from all of the wind, solar and biomass energy facilities on the premises;

9. Factors for determining that a large wind energy generation facility located in the Pinelands Area, as defined and regulated by the Pinelands Protection Act, P.L. 1979, c. 111 (N.J.S.A. 13:18A-1 et seq.), complies with the standards of P.L. 1979, c. 111 and the comprehensive management plan for the Pinelands Area adopted pursuant to P.L. 1979, c. 111 are as follows:

i. A copy of written correspondence from the Pinelands Commission shall be provided confirming that the large wind energy generation facilities comply with the standards of P.L. 1979, c. 111 and the comprehensive management plan for the Pinelands Area adopted pursuant to P.L. 1979, c. 111;

10. The construction of large wind energy generation facilities on farms preserved with any funding provided by the U.S. Department of Agriculture Natural Resources Conservation Service (NRCS) through the Farm and Ranch Lands Protection Program (FRPP) or any successor NRCS grant program

protecting land for agricultural uses, shall require the advanced, written approval of the U.S. Department of Agriculture Natural Resources Conservation Service;

11. Compliance with the criteria in this section shall be in addition to any other applicable State or Federal laws or regulations, including but not limited to:

i. N.J.S.A. 13:19-1 et seq., Coastal Area Facilities Review Act

ii. N.J.A.C. 7:38, Highlands Water Protection and Planning Act Rules; and

iii. N.J.A.C. 7:8, Stormwater Management;

2:76-25.8 Committee Review of an application for a small or large wind energy generation facility

(a) The Committee shall review an application and determine whether it is complete pursuant to N.J.A.C. 2:76-25.5;

1. Once the Committee determines the application is complete;

i. If the development easement is owned by a board or qualifying tax-exempt nonprofit organization, the Committee shall forward the application to the board or qualifying tax exempt nonprofit organization; or

ii. If the farm was preserved with any USDA-NRCS Farm and Ranch Land Protection Program funding, the Committee shall forward the application to the USDA-NRCS;

2. If the Committee determines the application is incomplete, the Committee shall notify the applicant in writing and identify all information required for completion.

2:76-25.9 Board or nonprofit review of an application for a small or large wind energy generation facility

The board or qualifying tax exempt nonprofit organization shall provide any comments on the application to the SADC within 30 days from the date of the Committee's notice;

2:76-25.10 Final Committee Review

(a) Within 90 days from determination of a complete application, the SADC shall approve, approve with conditions or deny the application;

1. The Committee's decision shall consider the factors in N.J.A.C. 2:76-25.6-7 and any substantive, objective issues raised in comments by the board or nonprofit organization that have not otherwise been considered;

2. The Committee's approval or denial of an application is subject to the Governor's review period following submission of the Committee's meeting minutes.

3. For a farm in the Pinelands Area, receipt of written confirmation from the Pinelands Commission that the wind energy generation facilities comply with the standards of P.L. 1979, c. 111 and the comprehensive management plan for the Pinelands Area adopted pursuant to P.L. 1979, c. 111 shall be required.

(b) The Committee may delegate review and approval authority to the Executive Director pursuant to N.J.S.A. 4:1C-5(e) and (f) for applications for small wind energy generation facilities where the board or nonprofit organization has not submitted comments concerning negative impacts from the application, and the application is in conformance with all provisions of N.J.S.A. 4:1C-32.4 and this subchapter. This shall not preclude the Executive Director from bringing any application before the Committee for review and approval, if deemed appropriate.

2:76-25.10 Final Committee review of an application for a small or large wind energy generation facility

The Committee may suspend or revoke an approval for wind energy generation facilities for a violation of N.J.S.A. 4:1C-32.4, this subchapter, or any term or condition of the approval.

2:76-25.11 Request for hearing

(a) Any farm owner who is aggrieved by an action of the Committee regarding an application or suspension or revocation of an approval may submit a written request to the Committee for a hearing.

1. A request for a hearing shall be sent to the Committee within 20 days of receipt of notice of the Committee's action;

2. Requests shall be sent to the Executive Director, State Agriculture Development Committee, New Jersey Department of Agriculture, P.O. Box 330, Trenton, New Jersey 08625-0330;

3. Farm owners shall be afforded the opportunity for a hearing thereon in the manner provided for contested cases pursuant to the Administrative Procedures Act, N.J.S.A. 52:14B-1 et seq., and 52:14F-1 et seq., and the Uniform Administrative Procedure Rules, N.J.A.C. 1:1;

4. The decision of the Committee shall be considered a final administrative agency decision, subject to the right of appeal to the Appellate Division of the Superior Court.